IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 8702 of 2002

Rajinder Kumar
..... Petitioner

Vs.
State of Haryana and others
..... Respondents.

AND

Civil Writ Petition No. 20251 of 2003

Jagdish Chand
..... Petitioner

Vs.
State of Haryana and others
..... Respondents.

Date of decision: March 14, 2007.

Present: Mr. R.K.Malik,Advocate for petitioner Rajinder Kumar
Mr. Anurag Goyal, Advocate for petitioner Jagdish Chand.

Mr.K.C.Gupta, Assistant Advocate General,
Haryana for official respondents.

Mr.Manjit Singh Advocate for Kuldeep Singh respondent.

JUDGMENT

M.M.Aggarwal, J.

Re: C.W.P.No. 8702 of 2002

Rajinder Kumar petitioner was appointed as Patwari on 4.1.1985. He had passed examination for the higher post of Field Kanungo on 15.4.1995.

Kuldeep Singh, respondent No.5, was appointed as Patwari on 5.5.1985. He had passed the examination on 23.12.1992. The vacancy for the post of Kanungo became available on 25.7.2001. Kuldeep Singh, respondent No.5 was promoted against that post on 15.1.2002 in view of the instructions of the Government, copy Annexure P-2, dated 12.4.2001 in which it had been directed that Patwari who qualifies the test first shall become eligible to be promoted even if he was junior Patwari as against the persons who had qualified for the post later.

This is a petition challenging action of the State in promoting Kuldeep Singh, respondent No.5, as Kanungo ignoring seniority of Rajinder Kumar petitioner as Patwari.

Re: C.W.P.No. 20251 of 2003

Jagdish Chand petitioner was appointed as Patwari on 6.12.1982. He was in fact promoted vide order, copy Annexure P-1, dated 27.12.2000 but he had some personal family problems and then had requested that he be continued on the post of Patwari and then was reverted from the post of Kanungo vide order dated 25.7.2001, copy Annexure P-3. Then vide copy Annexure P4 he again made request on 18.9.2001 that now his family circumstances have improved and he had no family problem and wants to be promoted on the post of Kanungo. However, ignoring his claim to be promoted, Kuldeep Singh respondent was promoted as Kanungo on 15.1.2002 against a vacancy which had fallen vacant on 25.7.2001.

On behalf of the petitioners, judgments of this Court reported as Arjan Dev Vs. State of Punjab and others 1997(4) RSJ 463 and Ram Kumar Sharma Vs. State of Haryana 1996(6) SLR 450 had been relief and it was

argued that an employee has to be considered for promotion in the order of their seniority as determined under the rules and not on the basis of date of acquiring qualification prescribed for the higher post. It was argued that petitioners had joined as Patwaris much earlier to Kuldeep Singh and Kuldeep Singh could not be promoted ignoring the claim of the petitioners only because Rajinder Kumar had passed the examination late and Jagdish Chand had even requested on 18.9.2001 for his promotion.

On behalf of the petitioners, a letter of the Government dated 18.5.2006 was produced showing that instructions of the Government contained in letter dated 12.4.2001, have been superseded in view of the judgment of the Hon'ble Supreme Court in Arjan Dev's case (supra) .

In view of the judgment of this Court relied on by the petitioners and the fact that instructions of the Government dated 12.4.2001 have since been withdrawn vide order/instructions of the Government dated 18.5.2006, these petitions merit acceptance.

Under these circumstances, these petitions are allowed. It is directed that respondents-State shall reconsider the case of Rajinder Singh and Jagdish Chand petitioners and Kuldeep Singh respondent for promotion as Kanungo as per their seniority in the cadre of Patwari, particularly from the date respondent Kuldeep Singh was promoted.

(M.M.Aggarwal)
Judge

March 14, 2007
raghav